

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3622 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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KAJU @ KALU S/O RAMESH CHHARA GAMENKAR

Versus

DISTRICT MAGISTRATE

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Appearance:

MR ARVIND K THAKUR for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

ORAL JUDGEMENT

1. The petitioner was detained under PASA by virtue of an order passed by the District Magistrate, Banaskantha, at Palanpur on 1st December 1998 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act']. The detaining authority in the grounds of detention considered the six offences registered against the

petitioner u/s 379, 114 of the IPC and on basis of these six registered offences alone, the detaining authority had a subjective satisfaction that, because of the reputation attained by the petitioner, the people at large suffer from a strong feeling of fear and insecurity of their luggage. The people at large the business men and service class are tired of the situation and are not able to undertake journey in the bus fearlessly and without tension and in order to prevent the petitioner from pursuing his activities and to establish a feeling of security amongst the people, detention under PASA is the only option available to the detaining authority as the petitioner is found to be dangerous person as contemplated under the PASA Act. The authority therefore passed the order.

2. The petitioner challenges the order of detention by this petition under Article 226 of the Constitution of India, mainly on the ground that the subjective satisfaction recorded by the detaining authority has no basis. The incidents that are relied upon, details of which is narrated in the grounds of detention, do not indicate the grounds that are taken into consideration by the detaining authority for detaining the petitioner. The subjective satisfaction is therefore based on extraneous and irrelevant factors and the order of detention would, therefore, stand vitiated.

3. None of the respondents have filed any affidavit in reply.

4. Mr.V.H.Patel, learned advocate appearing on behalf of Mr.Thakur, learned advocate for the petitioner has relied on the above contention only. He submitted that if the grounds of detention are perused, it indicates that the detaining authority has placed reliance on the six registered offences alone. Unlike other cases, there are no statements of any witnesses recorded by the sponsoring authority. The detaining authority has observed that people at large suffer from a fear complex and a complex of insecurity of luggage which has no basis. The narration of the six offences do not indicate anything on these lines and therefore, the detaining authority had no material before it to arrive at this subjective satisfaction. Mr. Patel, therefore, submitted that this is a clear case of non-application of mind and a subjective satisfaction is without any basis. Mr.Patel therefore submitted that the order of detention would stand vitiated and the petition may be allowed and the detenue may be ordered to be set at liberty.

5. Mr.H.H.Patel, learned AGP has opposed this petition. He has taken this court through the grounds of detention threadbare. He could not point out any material or ground to substantiate the subjective satisfaction recorded by the detaining authority as regards the fear apprehended by the members of public at large.

6. Considering the rival side contentions, the glaring feature of this case is that the detaining authority has recorded subjective satisfaction for exercise of powers which is based only on the six offences registered against the petitioner u/s 379 and 114 of IPC. If the language employed by the detaining authority in the grounds of detention is considered, it is very clear that the offences are the only basis for recording the subjective satisfaction. The detaining authority in the grounds of detention after stating the six offences in a tabular form in the grounds of detention goes on to briefly narrate the details of the six offences. Thereafter, the detaining authority states that, " Considering the offences registered against you, .....". Then the authority proceeds to record the subjective satisfaction that, because of the reputation attained by the detenue, people at large suffer from a feeling of fear while undertaking journey in the S.T. bus and feel insecured about their luggage. The people at large are not able to undertake journey at ease because of the worry about their luggage. Now if the narration of the six registered offences which are the basis of satisfaction arrived at by the authority are seen, none of the offences indicate any fear shown to have been experienced by the people at large or the passengers at large. Recording of the subjective satisfaction therefore is without any basis. This reflects that the order is passed either without application of mind or on basis of extraneous material. In either case, the order would stand vitiated.

7. In view of above discussion, the petition deserves to be allowed and the same is therefore allowed. The impugned order of detention passed by the District Magistrate, Banaskantha, at Palanpur on 1st of December 1998 in respect of the petitioner Raju @ Kalu s/of Ramesh Chhara, is hereby set aside. The petitioner be set at liberty forthwith, if not required, in any other case. Rule is made absolute accordingly with no orders as to costs.

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